



METIS SETTLEMENTS APPEAL TRIBUNAL



2008

Annual Report

Report

211(1) On or before March 31 in each year, the Appeal Tribunal must give to the Minister and the General Council a report for the year ending on the preceding December 31, showing

- (a) the nature of its activities
- (b) the general manner in which it dealt with matters coming before it;
- (c) any other matter that the Minister directs.

(2) The Minister must table the Appeal Tribunal's report in the Legislative Assembly if it is then sitting or, if it is not sitting, within 15 days after the commencement of the next sitting.

[Metis Settlements Act, R.S.A. 2004]

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A message from the Chair



Tansi:

I am delighted to present the Appeal Tribunal's annual report for 2008. This report summarizes our key activities and the manner in which we dealt with matters that came before us in 2008.

Whatever the activity, the Appeal Tribunal remained focused on its goals of strengthening confidence amongst stakeholders in its services, enhancing its independence and capacity, and promoting Metis culture and identity. This focus guided the Appeal Tribunal in the implementation of new streamlined investigation and hearing processes and in the issuance of simple, concise, culturally attuned decisions.

Through our outreach initiatives, the Appeal Tribunal improved understanding amongst key stakeholders and decision-makers of the *Alberta-Metis Settlements Accord*, and the Tribunal's role in resolving disputes that would otherwise impede progress under the Accord. A key part of our message includes our commitment to develop key processes and capacities to offer Settlement members and others mediation services that are culturally-appropriate and effective.

In the year ahead, the Appeal Tribunal will work with the Government of Alberta and the Metis Settlements General Council to further clarify and enhance the Appeal Tribunal's role and mandate in resolving disputes affecting Settlement members and other stakeholders involved with the Metis Settlements. I further anticipate that our participation in the *Alberta Agency Governance Framework* will result in greater parity between the Appeal Tribunal and other quasi-judicial tribunals. It should also yield greater clarity as to administrative supports, reporting, and capacity-building requirements required to meet our ever-growing mandate.

Finally, it continues to be my great privilege to work with colleagues, leaders, and staff whom I hold in high esteem. Together, we will continue to reach for and maintain the highest standards of fairness, accountability, effectiveness, and respect for Metis culture and identity.

Stan Delorme

Stan Delorme
Chair, Metis Settlements Appeal Tribunal

Who we are

With the appointment of Senator Thelma Chalifoux to the Appeal Tribunal in September 2008,¹ all seven members of the Appeal Tribunal are Metis. While it is not a requirement that all members of the Appeal Tribunal be Metis, it is an asset. This is especially so given the Appeal Tribunal's mandate to exercise its powers and duties with a view to preserving and enhancing Metis culture and identity and furthering the attainment of self-governance by Metis Settlements under the laws of Alberta.

The Appeal Tribunal members bring a range of skills and experience to the job. This range includes service at the highest offices in Canada, on Police Commissions, Boards of Education, Settlement Councils, General Council, and in Settlement communities as land and membership clerks and post-secondary training institutions.

The Appeal Tribunal also has a staff of seven people. Our staff and Tribunal members work together to ensure the Tribunal's investigations, hearings, and mediation processes are run in a consistent, fair, and culturally appropriate manner.



L to R: John Brossseau, Don Cunningham, Stan Delorme, Allan Lamouche,
Dorothy Anderson, Thelma Chalifoux, Violet Haggerty

Our vision

Our vision of the future is one where the Appeal Tribunal contributes to Metis culture and identity under the *Alberta-Metis Settlements Accord* by providing timely, fair, and effective dispute resolution services for Settlement members and other stakeholders.

¹ Senator Chalifoux replaced a long serving and much respected member, Mr. Ken Allred, who was elected to the Provincial Legislature in March 2008.

The nature and manner of our work in 2008 (What we did in 2008 & how we did it)

Tracking our work

The Appeal Tribunal is now using a computerized log-in system to track its calls, tasks, and meetings. This makes for more accurate counts, and is consistent with our commitment to being transparent and accountable to our stakeholders.

Membership Issues

The Appeal Tribunal continues to field questions and appeals on membership. The Appeal Tribunal issued one decision on membership in 2008. In that decision, the Appeal Tribunal found that the criteria for proving Metis identity had not been met.

This decision was appealed to the Alberta Court of Appeal by the Appellant. The Court of Appeal found that the Appeal Tribunal's decision was fair and reasonable and rejected the Appellant's application.⁵

The Appeal Tribunal also commenced work on a series of appeals involving the rejection of membership applications through the Settlement bylaw process. These appeals will be heard early in 2009.

Land Disputes

The Metis Settlements of Alberta have a land base roughly the size of Prince Edward Island (approximately 1.25 million acres). The Metis Settlements General Council has passed laws setting out different types of interests that members and others⁶ can hold on the land. The *Metis Settlements Act*, and attendant regulations, put registration structures and systems in place.

As in any jurisdiction where land interests may be bought, sold, leased, or willed through estate instructions, disputes often arise over those interests. This is reflected in the 276

Year	2006	2007	2008
Membership	1	10	54
Land Disputes	13	54	276
Surface Access/Comp	300	350	402
Conflict of Interest	--	--	7
Mediation	--	--	8 ²
Outreach Activities	--	--	156 ³
Other ⁴	9	15	135
Totals	323	429	1038

² This was added as a specific item at the end of the year. MSAT is committed to increasing the number of disputes that are resolved through mediation, instead of through hearings.

³ This heading has been added to reflect the Appeal Tribunal's commitment to increasing knowledge amongst our stakeholders about our work under the Accord.

⁴ "Other" includes general inquiries (that do not fit within one of the assigned areas, above), training initiatives, Alberta Justice Mapping Project, and administrative matters (i.e. calling and meeting with managers and staff in Aboriginal Relations).

⁵ Section 204 of the *Metis Settlements Act*, provides that an appeal from a decision of the Appeal Tribunal on a question of law or a question of jurisdiction lies to the Court of Appeal after leave to appeal has been obtained.

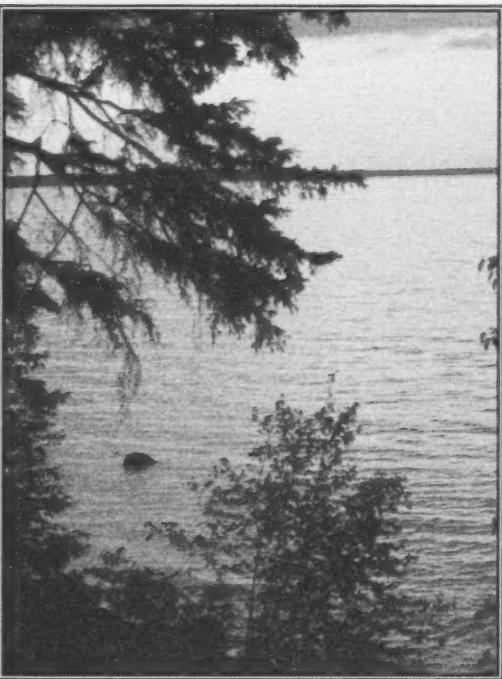
⁶ The *Metis Settlements General Council Land Policy* and *Metis Settlements Land Protection Act* set very strict limits on the types of interest that can be held by non-Settlement members.

contacts received or initiated by the Appeal Tribunal on land matters. It is also reflected in the half-dozen decisions where the Appeal Tribunal clarified the process for getting and losing interests and the rights attached to existing interests in land.

Whatever the dispute, the Appeal Tribunal asked the Appellants and other parties to explain how the rules⁷ for getting or losing interests in land applied to their case. The Appeal Tribunal will continue to call on parties to a hearing to identify the rules they think are applicable and to explain how those rules should guide the Tribunal's decision.

Surface Access / Compensation

The Land Access Panel and Existing Leases Land Access Panel are responsible for deciding right of entry applications, compensation matters, and assignments of interest. Over 402 contacts were made in this area and the Tribunal issued eight decisions determining rights to compensation.



What each decision had in common was that rights to compensation depended on the interests a party could prove they held. Land Registry records were often relied on to prove those interests. The right to compensation also often depended on how those interests stacked up against the rules for distribution of compensation passed by local Settlements.

The Appeal Tribunal has also streamlined its process for issuing simple amendments. A simple amendment is one where there has been a change of operator, existing mineral lease holder, or occupant.

In the past, the Tribunal sought the consent of occupants before changing Right of Entry Orders or Compensation Orders to reflect changes in resource development companies. This led to significant delays in the issuance of simple amending orders. These delays

occurred because occupants saw this as an opportunity to negotiate new compensation rates with a new operator or existing mineral lease holder. However, given that the *Metis Settlements Act* sets out other avenues to review compensation, the Appeal Tribunal adopted a streamlined system closer to that of the Surface Rights Board, which sometimes issues simple amending orders in less than 2 business days from receipt of an application for amendment.⁸

⁷ These rules include the General Council Policies, local Bylaws, and/or the *Metis Settlements Act* and *Land Registry Regulations*, and other Accord legislation.

⁸ The Appeal Tribunal's streamlined amendment process requires that applicants confirm whether they are contractually bound to seek the occupant's consent before assigning their interests.

With this streamlined approach, the Appeal Tribunal issued 44 amending orders in 2008. This greatly reduced the accumulated backlog of applications for simple amendments. The Appeal Tribunal expects that its backlog will be completely eliminated early in 2009.

Conflict of Interest

The Appeal Tribunal is named in the Metis Settlements General Council Financial Interest Policy. This Policy sets out rules for determining when a Settlement Councillor has a financial interest in a manner. These types of disputes are more commonly referred to as conflicts of interest.

The Appeal Tribunal is committed to providing dispute resolution services whenever mandated to do so. It received an appeal in writing in late 2008 concerning an alleged conflict of interest. Information is being gathered and it is expected that a hearing will be held in March or April of 2009. It is further expected that additional appeals concerning alleged conflicts will be received, which is why this type of dispute is now being tracked separately.

Mediation

The Appeal Tribunal is committed to using mediation to resolve disputes. Mediation gives the parties control over the end result. Generally, this leads to outcomes that are more likely to be embraced and willingly followed by all the parties. It also promotes understanding amongst participants about the (cultural and family) values, identity, needs and priorities of others. This understanding allows members and others to move beyond the dispute and continue working together and to making progress under the *Alberta-Metis Settlements Accord*.

The Appeal Tribunal took steps in 2008 to increase knowledge amongst stakeholders about mediation and to strengthen its own capacity to conduct mediations when deemed appropriate. The Appeal Tribunal also conducted a workshop in 2008 to identify key priorities and approaches to mediation and has developed a strategy for building its capacity to effectively offer culturally-appropriate mediation services to members and others.

Outreach Activities (Community Outreach)

The Appeal Tribunal is committed to raising awareness amongst stakeholders about the work we do. The Appeal Tribunal does this because it believes that when members and others know about the work we do, they will use our services to resolve disputes that might otherwise impede progress under the *Alberta Metis Settlements Accord*, or that might otherwise sour relations between neighbours or family members.

The Appeal Tribunal visited five Settlements in 2008. We met with Councils to discuss our commitment



to creating better understanding of Settlement laws. We met with Settlement youth in the schools. They performed skits that gave them an idea of how our hearings are conducted. We also met with community members and Elders to discuss the Tribunal's role and how they might use our services to resolve disputes in fair and culturally appropriate way.

The Appeal Tribunal is planning to visit the remaining Settlements in 2009, and will commence a second round of community meetings in 2009 to follow-up on the work we have done to date and to solidify our outreach goals.

(Outreach to Decision-Makers)

The Appeal Tribunal also strengthened understanding amongst other key decision-makers about our role and the approaches we are taking to independently fulfill our mandate. In this



L to R: Donavon Young, Ken Allred, John Brosseau, Stan Delorme, Don Cunningham
Front: Thelma Chalifoux, Dorothy Anderson, Violet Haggerty, Minister Gene Zwozdesky,
Allan Lamouche

regard, we had very positive meetings with the Minister responsible for Aboriginal Relations and the Metis Settlements General Council Executive.

The Appeal Tribunal also met with the head of the Alberta Governance Secretariat. The purpose of this meeting was to promote understanding of the Appeal Tribunal and to set the stage for future work under the *Alberta Agency Governance Framework*.

(Outreach to post-secondary students and professionals)

The Appeal Tribunal also continued to foster awareness and understanding of Metis Settlements' self-governance structure under the *Alberta-Metis Settlements Accord*, and the Tribunal's role, by speaking to post-secondary students and other professions at the following conferences:

- *Colloquium on Emerging Realities of Metis, Non-Status and Urban Aboriginal Populations*, Carleton University, Ottawa, February 14, 2008
- *Aboriginal Decision-Making Systems*, University of Alberta, Faculty of Law, March 4, 2008
- *Conference on Laurent Garneau and the Metis*, University of Alberta, Edmonton, April 11, 2008
- *Aboriginal Self-Governance Systems*, University of Alberta, June 4, 2008

(Outreach through the Metis Messenger and the MSAT Website)

The Appeal Tribunal was a regular contributor to the Metis Messenger newsletter in 2008. It used the Messenger to update members and other readers about its priorities, decisions, and upcoming community meetings.

The Appeal Tribunal also continued to update and refine its website as new decisions and publications, such as the new business plan for 2008-2011, were released.

Appeals to the Alberta Court of Appeal

The Appeal Tribunal enjoys a review process that allows members and others to seek leave to appeal from the Alberta Court of Appeal to determine whether the Tribunal has made a mistake in interpreting the law, or in assuming jurisdiction over a matter. Having access to this type of review is good for those who use the Tribunal, and it is good for the Tribunal to receive constructive criticism of its decisions from time to time.

Three matters were appealed to the Alberta Court of Appeal. As indicated above, one of the matters concerned the Appeal Tribunal's decision on membership, and leave to appeal was not granted.

The second request for leave to appeal involves the Appeal Tribunal's finding that in order to effectively assert an interest in land, one must ensure that the interest is registered or recorded in the Metis Settlements Land Registry system. This leave to appeal application will be considered in early 2009.

Finally, the question of how to best determine *cumulative impacts* under section 118(1)(c)(iii) of the *Metis Settlements Act* is still before the Alberta Court of Appeal. This matter was first brought forward in 2007 and it is expected that final arguments will be made in late spring, 2009. It will likely take several more months before the Alberta Court of Appeal issues its decision.

Appeal Tribunal Decisions

The Appeal Tribunal issued 15 decisions in 2008. It also issued 44 amending orders in 2008. For full copies of these orders, see our website at www.msat.gov.ab.ca, or call our office at 780-422-1541 or toll free at 1-800-661-8864 for a free copy.

Year	2006	2007	2008
Land / Membership / Compensation Decisions	7	6	15
Amendments to REOs and Comp. Orders	16	17	44
Totals	23	23	59

Fiscal responsibility

The Appeal Tribunal reports its activities on a calendar year basis, from January 1 to December 31. However, its financial reporting period follows the provincial government fiscal year from April of the preceding year (2007) to March of the current year otherwise reported on (2008).

The table below compares Tribunal expenditures for 2007/2008 with those of 2006/2007.

	2007/2008		2006/2007	
	Authorized Budget	Actual Expenditure	Authorized Budget	Actual Expenditure
Manpower	\$ 526,200	\$ 502,195	\$ 504,406	\$ 497,825
Supplies & Services	<u>\$ 507,600</u>	<u>\$ 451,280</u>	<u>\$ 517,594</u>	<u>\$ 542,287</u>
Total	\$1,033,800	\$ 953,475	\$1,022,000	\$1,040,112

The Appeal Tribunal had a surplus of the \$80,325 in the 2007/2008 fiscal year. This is due to changes in personnel and correlating vacancies, “downtime” in scheduled hearings while the Tribunal retooled its rules and procedures, and the tentative start in the Tribunal’s community outreach program.

The Appeal Tribunal continues to utilize and adhere to government standards and practices in managing its finances, general administration, planning, reporting, and human resources.

Appendix One

METIS SETTLEMENTS APPEAL TRIBUNAL

ORDERS ISSUED – January 2008 to December 2008

- Order 195
Between: Lawrence Ladouceur, Appellant and,
Buffalo Lake Metis Settlement,
Alberta Energy Company Ltd., and
Rocky River Petroleum Ltd., Respondents
- Order 194
Between: Lawrence Ladouceur, Appellant and
Buffalo Lake Metis Settlement,
Alberta Energy Company Ltd., Rocky River Petroleum Ltd., and
Alberta-Pacific Forest Industries Inc., Respondents
- Order 193
Between: Ed Parenteau and
Tom Parenteau and Leo Parenteau and
Paddle Prairie Metis Settlement, Ernestine Risdale,
Ambrose Parenteau, Susie Parenteau Fischer
- Order 192
Between: *Leslie G. Nooskey and Paddle Prairie Metis Settlement (Appellant) and Hewitt Oil (Alberta) Ltd., Metis Settlements General Council, Leslie G. Nooskey, Bobby (Robert) H. Ghostkeeper, Estate of Rosemary Wanuch, and Andrew Ducharme (Respondent)*
- Order 191
Between: Lisa Michelle Calliou, Clifford Calliou and
Brian Taylor and
Metis Settlements General Council,
Fishing Lake Metis Settlement,
Canadian Natural Resources Limited,
Conoco Canada Resources Limited, and
Husky Oil Operations Limited
- Order 190
Between: Ben Howse, Appellant and
Kikino Metis Settlement Council & Ben Howse, Respondents

- **Order 189**
Between: Calvin L'Hirondelle, Appellant and
Peavine Metis Settlement, Respondent
Arrow Energy Ltd., Respondent
- **Order 188**
Between: Glenna Cunningham
Georgina Cunningham
Albert Cunningham Jr., Appellants and
Peavine Metis Settlement, Respondent
- **Order 187**
Between: Rose Marie Cunningham, Appellant and
Archie Collins, Respondent
Peavine Metis Settlement, Respondent
- **Order 186**
Between: Ben Hogenson, Appellant and
Kikino Metis Settlement Council, Respondent
- **Order 185**
Between: David Delorme, Appellant and
Elaine Delorme, Respondent
- **Order 184**
Between: Esther Auger and
East Prairie Metis Settlement and
Metis Settlements Land Registry,
- **Order 183**
Between: Hector Deschamps, (Appellant)
Metis Settlements General Council,
Fishing Lake Metis Settlement,
Crescent Point Resource Ltd.,
- **Order 182**
Between: Dean Howse, (Appellant)
Métis Settlements General Council,
Buffalo Lake Métis Settlement,
Apache Canada Ltd. -and-
Rocky River Petroleum Ltd. (Respondents)
Yolanda Cardinal, William Robert Sinclair, Francis Joe Gladue,
Russell Joseph Gordon, Clarence John Berard, Tanya Boudreau,
Priscilla Howse, Pauline Charlene Joe, Lawrence James Ladouceur,
Gloria H. Coles, Conoco Canada Ltd. -and- Alberta Energy Company Ltd.(Other Parties)
- **Order 181**
Between: *Imperial Oil Resources Limited,*
Metis Settlements General Council,
Fishing Lake Metis Settlement,
Irene Calliou and
Crescent Point Resources Ltd.

For more information, contact us at:

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